Canadian Centre
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REPORT FROM THE ROUNDTABLE ON
"JUST WAR AND GENOCIDE"

CCFPD

8-9 December 2000 (Ottawa)

1011.8E

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REPORT FROM THE ROUNDTABLE
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In the first week of December, a group of prominent scholars and practitioners met in Ottawa to discuss a collection of papers on Just War and Genocide. The meeting, hosted by the Canadian Centre for Foreign Policy Development, provided the authors an opportunity to share views with peers before preparing final drafts of papers for circulation to policy makers, the International Commission on Intervention and State Sovereignty (ICISS), and others. The papers will also be published in a volume by McMillan at the end of 2001. The project, initiated by the Foundation for International Security (United Kingdom) four years ago, aims to outline a moral and legal framework for state intervention and evaluate possible responses available to the international community in the face of a genocide. The following is a thematic synopsis of key points made during the two-day discussion.

List of Presented Papers

- Stan Windass, *Just War and Human Rights*
- Barbara Harff and Ted Robert Gurr, *Genocide and Politicide in Global Perspective: The Historical Record and Future Risks*
- Satish Nambiar, *The Military Dilemma: Lessons From Experience* (Presented by Stan Windass)
- Steven Haines, *Genocide, Humanitarian Intervention and International Law*
- Tim Laurence, *Humanitarian Assistance and Peacekeeping: Future Roles, Future Prospects*
- Saul Mendlovitz and John Fousek, *A UN Constabulary To Enforce the Law and Genocide and Crimes Against Humanity*
- Brian Urquhart, *The United Nations: A Problem fo Authority* (Presented by Stan Windass)
- Jonathan Dean, *A Strategy for Ending War*

Just War as a Moral and Legal Framework for Humanitarian Interventions

Stan Windass outlined the traditions of just war and nonviolence in Western thought and assessed their impact on the idea and the practice of the United Nations. He said that although the foundation of the Security Council was essentially rooted in the just war tradition, the onset of

the Cold War prevented the United Nations from enforcing global justice for ideological reasons. A complex array of peacekeeping initiatives emerged in line with the non-violent tradition, giving rise to a dichotomy between peacekeeping and war fighting. This dichotomy led to efforts aimed at trying to keep peace when there was no peace to keep. Other related trends emerged during the past century: a human rights movement and a revolution in transparency, which was brought about by the extraordinary explosion of communications. Both had a profound impact on how the politics of identity shape conflict. As the world shrinks and human rights awareness mounts, genocide comes into sharp focus.

Saul Mendlovitz raised a point that because the just war framework overwhelmingly reflects a Western perspective, it may prove constraining for some to endorse this idea wholeheartedly. Others, including Howard Adelman, expressed their uneasiness about framing the theory and practice of the United Nations within the just war tradition. The foundation of the UN is rooted as much in the peace doctrine as in just war theory.

The assumption that the maintenance of international order (i.e., the conduct of a just war) in the Middle Ages was squarely the sovereign's responsibility is false, Adelman went on to say. Instead, the sovereign was subject to a separate moral authority vested in the Church. Unlike the Church in the past, the UN does not have a separate moral authority today. It is self-constituted by member states that may or may not intervene in the international arena, bringing into focus questions related to the creation of international standards, the existence of moral and independent authority, the nature and membership of the international community, and other issues.

Tim Laurence said that even though there may not be a separate moral authority, the international community legitimises or condemns actions through *post facto* evaluations, as was the case in the aftermath of the Kosovo intervention. In this sense, NATO may have felt it had moral authority to intervene and the international community gave its actions moral approval, despite the structural barriers at the Security Council. In a similar vein, Steven Haines insisted that the decision to resort to force is legitimate when made within the international community collectively. The collective nature of decision making alleviates fears about potential abuse of power (i.e., neo-colonialism) and is indispensable precisely because the criteria for intervention have not been clearly mapped out. Nevertheless, the link between moral and legal considerations should be addressed better.

There is a need for individual states to be aware of risks and be able to react to them. However, when the UN fails to act collectively, it is important that member states recognise their obligations, said Haines. "States cannot hide behind the inherent political shortcomings of an organisation that they themselves created, in order to avoid meeting their broader legal obligations." The just war framework brings into focus states' third-party obligations (as formally acknowledged in the *Genocide Convention*) to intervene when there is substantial *prima facie* evidence of genocide being, or about to be, committed. Considerations which should be brought into play include:

- the decision to resort to force must be made by a legitimate authority (i.e., collectively), reflect a just cause, and be pursued with a morally right intention,
- military intervention must be regarded as a last resort and have a reasonable prospect of success.

However, what happens if there is no single state (or a collectivity of states) willing and able to intervene, asked Adelman? Numerous examples exist when the international community just stood by while grave crimes against humanity were being committed. There is low tolerance levels in democracies for casualties and unwillingness to sacrifice life in far away places. The question of proportionality between the casualties of (mostly) Western armies and the casualties of (mostly non-Western) civilians was also raised. How many Somali lives is one American life worth, asked John Mueller? The high altitude air campaign in Kosovo clearly demonstrated the reluctance on the part of NATO to lose military life at the expense of civilians on the ground. Some participants disagreed with this assessment, pointing to missions where the loss of life is expected and to the existence of soldiers, located in the West, ready to sacrifice their own lives.

The UN may well not be capable of dealing with the shift from interstate to intrastate conflict, some argued. Steve Lee suggested to include Paul Heinbecker, Canada's Ambassador to the UN, in future discussions to share the Canadian experience over the past two years at the Security Council.

There is a need to address the appropriate use of other tools besides military intervention, including diplomatic and economic sanctions. The need for creating a framework (scale) for their use was raised.

Ted Gurr questioned the assumption made by Lieutenant General Nambiar that "the current levels of ethnic, religious, theological, and other such forms of conflict, are not likely to reduce in scope or extent in the foreseeable future." According to Gurr, the levels of conflict are actually on a marked decrease. One reason for this trend, he said, are the initiatives of regional powers and organisations in conflict situations.

Charles Weitz pointed out that conceptualising genocide in terms of grave human rights breaches is too narrow and should include considerations relating to the rights to food and health. Examples abound where a state has deliberately starved masses of people or failed to address the spread of diseases. Currently there exist no mechanisms to address such challenges, despite UN Charter commitments.

Humanitarian Assistance and Peacekeeping

Some doubted the possibility of maintaining neutrality in humanitarian assistance and, especially, in peacekeeping. Suggestions were made that the concept should be dropped from the peacekeeping vocabulary all together since it is virtually unattainable. Issues of neutrality become especially salient during the transition period, with the entry of the World Bank, IMF

and other international agencies, said Adelman. The policies of these organisations have uneven impact on different segments of post-conflict societies, making the concept irrelevant, at best. Another example challenging neutrality in Bosnia, for instance, was the success of stopping people from killing each other and then failing to assist them in returning to their occupied homes.

The difference between Peacekeeping and peace enforcement was noted. Haines pointed out that while peacekeeping provides conditions for other initiatives to move forward, peace enforcement means enforcing an agreement between opposing side. He went on to say that while it may be possible to remain impartial on the strategic level, it is almost impossible to do so at the tactical level. The military remains key during the transition period (which follows peace enforcement, in most cases) even though it is often difficult to square military and political objectives. While the military may not be trained to fulfil civilian functions, such as policing, for instance, many militaries are ready and often competent to play these roles. Much depends on the type of training and culture.

The importance of long term commitment in peace operations and the need for political will and public support was emphasised.

A Structural Model of the Preconditions of Genocide and Politicide

There was some discussion of a model to identify states at high risk of genocide and politicide, devised by Barbara Harff and Ted Gurr in partnership with the U.S. government. The model identifies countries at risk of genocide and politicide in the early 21st century, based on a range of "risk factors" including: the salience of elite ethnicity, exclusionary ideology, autocratic regime, and others. While examples of countries at risk were provided, they were selected randomly rather than in a descending order from those most at risk to those least at risk.

Adelman pointed out that the reluctance of the U.S. officials to share the study's results demonstrates rather well the problems related to "hedging responsibility" within the just war framework. The reluctance to publicise comprehensive data is understandable, since awareness or knowledge of an imminent genocide would surely imply a responsibility to intervene. Similar rationale may be applied to Canada's wavering on an Early Warning system. One of the reasons why Canada did not pursue the issue aggressively, despite former Foreign Minister Axworthy's commitment, was that inaction in the face of forecasted genocide would be embarrassing. The issue of diverse Early Warning mechanisms, depending on a state's capability to intervene was also raised, bringing further questions about the ethics of intervention into focus.

Some participants emphasised the need to make the data available, perhaps through an independent commission. Laurence expressed his disagreement with the criticism of the researchers, insisting that their responsibility does not necessarily go beyond producing the analytical tool. It may be entirely up to the policy makers to decide how it is used.

Some pointed out the inadequacies of the risk factors and doubted the assessment of their relative weight. Others asked whether differences in societies which run along the same cleavage acerbate the risk of genocide as opposed to cross-cutting cleavages. In other words, whether there is a bigger risk of genocide in societies where differences (ethnic, religious, socio-economic, etc.) are concentrated within distinct groups as opposed to societies where differences (ethnic, religious, socio-economic, etc.) run across the distinct groups' identities? Gurr pointed out that evidence showing cross-cutting cleavages as preventing ethnic conflict is very weak. Harff added that the mobilisation of cleavages is more important that the differences themselves – which is among the reasons why democracy is the "trumping" condition most of the time. She also pointed out that the data are not as inaccessible as some suggested and can be acquired through several sources including published journal articles, and soon the University of Maryland web-site.

A United Nations Constabulary to Enforce the Law and Genocide and Crimes Against Humanity

Mendlovitz emphasized the futility of indicting war criminals without convicting them and bringing them to justice. We are seeing the emergence of a robust normative code that should, if we had the means to implement it, create a global legal system. Yet in order for such a system to be achieved and sustained, we need to increase our capacity at the enforcement level. In response to this need, Mendlovitz envisions and recommends the formation of a United Nations constabulary, made up of 12,000-20,000 individually recruited public servants. The force would be lightly armed and trained to deal with crimes against humanity, rather than war crimes or crimes of aggression. The idea of "international citizenship" should apply to these individuals, such that their allegiance would be to the UN constabulary rather than to their country of origin. So as not to paralyse the force, the Secretary General would have the authority to engage it without the consensus of the Security Council.

Reactions centred around questions of the constabulary's mandate, its military capability, and its financing. Gurr cautioned against restricting the force's mandate to "crimes against humanity." Haines concurred, noting that it would also be difficult to define the "crimes against humanity" from which the force would be expected to protect people. Where does the international community have a legitimate right to intervene? Where would the line be drawn? he asked. In a similar vein, a lightly armed force would be limited in its capacity to protect and enforce: its mandate would necessarily be curtailed. Making reference to the chapters of the UN Charter, Haines warned against "injecting a Chapter 6 force into a Chapter 7 mandate." (Chapter 6 allows a UN force to resolve conflict by peaceful means, while Chapter 7 calls for the use of full force to restore international peace and security.)

These concerns were echoed by other participants. Armstrong-Whitworth questioned whether a lightly armed constabulary could really protect a safe haven, while Laurence stated categorically that it could not. He suggested that the constabulary could perform the task of monitoring, such as that which was tried and failed in Kosovo. This force might be useful before conflict or after it

is over, but not during, he said. Gurr agreed, suggesting that an intermediate force might be more appropriate.

Mueller added that our inability to try and convict war criminals is not the cause of war. He supported his statement by noting that slavery was abolished without trying slave-holders, and also cited the two world wars as examples. Supporting earlier comments about the size and power of the constabulary, he asserted that what is really needed is "a bigger force to make thugs fade away."

The feasibility of creating and engaging the constabulary was widely questioned. Some participants, including Mendlovitz, wondered who would finance this force. Weitz doubted, given the concentrations of authority in the UN, that the force would ever be put into action. Unless you can get rid of the veto, you'll never get anywhere, he said. Harff shared the broad concerns put forth about the idea of a constabulary, pointing out that it was not a new concept: Why hasn't it worked in the past?

A Strategy For Ending War

Jonathan Dean noted the human and economic costs engendered by violent conflict and concluded that "we have to kill war or war will kill us." As a part of his "Global Action to Prevent War," he stressed two key steps:

- building down the military capabilities of individual governments
- integrating globally all our various mechanisms for preventing war into a single programme
- building a worldwide coalition of governments and civil society organizations to promote implementation of the programme.

The discussion flowing from the presentation of this strategy revolved around questions of the feasibility of such a grand vision. Laurence, focussing on Dean's call for disarmament, argued that the overall reduction of military capabilities would not make war less likely. "This just makes us more vulnerable to tyrants," he said. On another equally sceptical note, Mueller warned that it is not getting rid of arms that brings peace, but rather peace that gets rid of arms. He went on to point out that the kinds of conflicts we see today are often fought with weapons such as machetes or agricultural tools. Disarmament would be very difficult to achieve at that low level, Mueller said. Harff, personally very doubtful that war can ever be eradicated, noted that conventional weapons are a major source of income in some countries. Until we can find some alternative means of promoting economic growth and eradicating disease to improve the lives of all people, there is not much hope of stopping economically profitable arms trafficking.

The feasibility of the "Global Action to Prevent War" was also questioned on other bases. Haines and Laurence, professing their pessimism, looked from the realist perspective. The former warned that there is a danger of losing supporters if the "grand visionary" aspects of the plan are over-emphasized. He believes that good things happen as a result of very practical developments.

The European Union, he said, would never have gotten off the ground if proponents had clung too tightly to grand, idealistic visions instead of gradually building mechanisms from the ground up.

Many participants wondered what kind of practical steps could be taken to realize the goal of ending war. Lee noted that getting smaller states on side is not the big problem. Is there any specific part of this programme directed towards the great powers, especially the U.S. public? he asked. John English meanwhile wondered who within the great powers needed to be convinced of the merits of the programme. Is it elite opinion or public opinion that needs to be brought on side? He noted that in Canada, elite opinion carries the day: things have been changed against the will of public opinion. How critical is elite opinion in the US? he asked. Echoing these questions of who and how, Heidi Hulan reminded us of the enormous challenge posed by the permanent members of the UN Security Council. They have their own national interest in mind and their veto power will ultimately decide what does and does not come to the fore.

Dean argued that the Global Action program was realistic and was in fact moving toward implementation, as indicated by the nature of the present discussion: Participants were discussing, not whether a global security system could be created, but the imperfections of an already existing global security structure.

Stan Windass wound up the proceedings by reverting to the problem of enforcing justice between sovereigns which was the dilemma faced by the mediaeval thinkers who codified the just war doctrine. While it is true that in early theological formulations sovereignty descended from God via the pope to sovereigns, by the late Middle Ages sovereignty in effect firmly resided with the monarchs. It then descended through the democratic and human rights movements to the people, where it now resides. If "we the people" have an obligation to intervene to prevent genocide and crimes against humanity, we must have a corresponding obligation to discover or invent the means for effective intervention. The Foundation for International Security will therefore focus its research for the International Commission on Intervention and State Sovereignty on the problem of modalities of intervention.

Seminar on Just War and Genocide

List of Participants
December 7-9, 2000
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Ottawa, Ontario

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